

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Xfone USA, Inc.)	
)	
Petition for Waiver of)	CC Docket No. 96-45
Sections 54.307(c) and 54.802(a) of the)	
Commission's Rules.)	
_____)	

PETITION FOR WAIVER

Xfone USA, Inc. ("Xfone") by its undersigned attorneys, and pursuant to Section 1.3 of the Commission's rules, hereby requests a waiver of (1) the December 30, 2007, and March 30, 2008, deadlines set forth in Section 54.307(c) for the filing of quarterly line counts for purposes of receiving high cost support; and (2) the December 31, 2007, and March 31, 2008, deadlines established by Section 54.802(a) for the filing of quarterly line counts for purposes of receiving Interstate Access Support ("IAS"). As further discussed below, Xfone is an eligible telecommunications carrier ("ETC") that serves rural customers in certain areas in Mississippi. Good cause exists to grant the requested waiver because a corporate acquisition and significant corporate reorganization, which ultimately resulted in the loss of key personnel charged with submitting regulatory filings to USAC and the FCC, caused Xfone to miss the Commission's quarterly line count submission deadlines in December 2007, and March 2008.

In support hereof, Xfone states as follows:

I. BACKGROUND

Xfone USA, Inc., is a Mississippi corporation with principal offices located at 5307 W. Loop 289, Lubbock, Texas 79414. Xfone is a wholly-owned subsidiary of Xfone, Inc., a publicly traded Nevada Corporation. Xfone provides resold and facilities-based local exchange

and interexchange services throughout the state of Mississippi, and it is designated as an ETC in that state.

On November 16, 2007, Xfone, Inc., and NTS Communications, Inc., (“NTS”) filed a joint domestic and international Section 214 application for the transfer of control of NTS to Xfone, Inc. (“Joint Application”).¹ The FCC issued a Public Notice on December 21, 2007, announcing that it had accepted the Joint Application for streamlined processing.² However, the Commission subsequently removed the Joint Application from streamlined processing pursuant to a request by the Executive Branch due to foreign ownership issues.³ After due investigation by the Executive Branch, the FCC granted the Joint Application on February 14, 2008.⁴

As an ETC, Xfone is required to submit its quarterly line counts for purposes of receiving high cost support and IAS by the deadlines set forth in Sections 54.307(c) and 54.802(a) of the Commission’s rules. Specifically, quarterly line counts for high cost support are due by July 31st, September 30th, December 30th, and March 30th of each year,⁵ and quarterly line counts

¹ *Application of NTS Communications, Inc., Transferor, and Xfone, Inc., Transferee*, File No. ITC-T/C-20071109-00456, WC Docket No. 07-272 (filed Nov. 16, 2007).

² *Streamlined International Applications Accepted for Filing; Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Public Notice, Report No. TEL-01218S (rel. Dec. 21, 2007).

³ *Streamlined International Applications Accepted for Filing; Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Public Notice, Report No. TEL-01222S (rel. Jan. 4, 2007); *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, Public Notice, WC Docket No. 07-272, DA 08-38 (rel. Jan. 7, 2008).

⁴ *International Authorizations Granted; Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Public Notice, Report No. TEL-01234, DA No. 08-364 (rel. Feb. 14, 2008); *Domestic Section 214 Authorization Granted; Application Filed for the Transfer of Control of NTS Communications, Inc. to Xfone, Inc.*, Public Notice, WC Docket No. 07-272, DA 08-370 (rel. Feb. 14, 2008).

⁵ 47 C.F.R. § 54.307(c).

for IAS are due by the last business day of June, September, December, and March of each year.⁶ Until its corporate reorganization and transfer of USF compliance responsibilities to NTS, Xfone has timely filed all of USF reports, including its quarterly high cost line counts in July and September 2007, and its quarterly IAS line counts in June and September 2007. However, Xfone missed the December 2007, deadlines for its quarterly high cost and IAS line counts, which were filed on January 8, 2008, and it is Xfone's understanding that the Universal Service Administrative Company ("USAC") will not accept Xfone's December 2007, and March 2008, line counts, absent a waiver from the FCC.

In order for Xfone to receive high cost support and IAS for the periods covered by its December 2007, and March 2008, quarterly reports, a waiver of Sections 54.307(c) and 54.802(a) is required. As further discussed below, good cause exists that merit waiver of the deadlines set forth in the Commission's rules to submit the quarterly line count information to USAC.

II. STANDARD FOR WAIVER

Generally, the Commission's rules may be waived only for good cause shown.⁷ The FCC may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ Waiver of the Commission's rules is therefore appropriate if the requested

⁶ 47 C.F.R. § 54.802(a).

⁷ 47 C.F.R. § 1.3.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

relief would not undermine the policy objective of the rule in question, good cause or special circumstances warrant a deviation from the general rule, and that such deviation will serve the public interest.¹⁰

III. DISCUSSION

A. Good Cause Exists for a Waiver of the Commissions Deadline to File Quarterly Line Counts

Good cause exists for the Commission to grant the requested waiver because Xfone underwent a significant internal personnel audit and restructuring that directly affected the Xfone employees responsible for submitting the company's universal service filings. As discussed above, Xfone, Inc., and NTS entered an agreement whereby Xfone, Inc. would acquire control of NTS. Although Xfone, Inc., was the acquiring company, NTS is larger, and has better developed regulatory compliance procedures than Xfone.

The sale of NTS to Xfone, Inc., was completed on February 26, 2008. Barbara Baldwin (President and CEO of NTS) was named President and CEO of Xfone USA, Inc., on February 28, 2008. As of that date, Xfone has 75 employees. For the first part of March 2008, Ms. Baldwin conducted personnel reviews and began the consolidation and downsizing process. Prior to the restructuring of the company, there were three employees dealing with regulatory filings for Xfone: a Vice President for Regulatory, a Regulatory Director, and an administrative assistant. The Vice President for Regulatory left the company on March 11, 2008, and the Regulatory Director left on March 16, 2008. The administrative assistant who filed Xfone's reports at the direction of the Vice President and the Director left on April 18, 2008; however, that person was not in charge of preparing or reviewing Xfone's regulatory filings. After the administrative assistant left, NTS took over Xfone's regulatory functions, and in the process of

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

gathering information to take over those responsibilities, NTS learned that Xfone's March 2008, USF line count reports had not been filed.

The consolidation of the regulatory responsibilities in one affiliate resulted in cost savings for the company's operations as a whole, and contributed to additional corporate synergies and efficiencies by consolidating operations and eliminating redundant employee functions and positions. However, the transaction and resulting consolidation and downsizing caused severe disruptions that directly impacted the personnel responsible for Xfone's USF filings. Ultimately, 30 employees were let go or left the company, including all of Xfone's employees that were directly responsible for preparing its USF filings. Although Xfone's regulatory personnel responsible for preparing its quarterly line counts were with the company through the middle of March 2008, NTS and Xfone entered into the acquisition agreement with the expectation that the transaction would close in December 2007. The uncertainty and anxiety associated with the closing date, and the question of which employees would remain with the company post-transaction, was pervasive and debilitating.

The uncertainty and anxiety associated with the acquisition and anticipated restructuring and downsizing directly and adversely affected Xfone's regulatory personnel, and resulted in the line counts due in December 2007, to be filed approximately one week late on January 8, 2008. Furthermore, Xfone did not timely file its quarterly high cost and IAS line counts in March 2008, because of the loss of key personnel at Xfone responsible for making that filing. Although Xfone's regulatory personnel apparently prepared its quarterly line counts due in March 2008, Xfone did not discover that they had not been filed until after NTS personnel had conducted an audit to determine the status of Xfone's regulatory filings. USAC staff has informed Xfone that USAC will not accept the late-filed January 8, 2008, line counts or the March 2008, line counts

unless a waiver is granted by the Commission. Out of an abundance of caution, Xfone intends to file its March 2008, line counts by June 30, 2008, even though that filing will not be accepted by USAC so that all of the pertinent information is available to USAC and the Commission.

The FCC has found good cause to exist in granting waivers of the line count filing deadlines to other ETCs experiencing nearly identical or substantially similar circumstances as Xfone. *See, e.g., Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's rules*, Order, 21 FCC Rcd 10155, ¶ 4 (2006) (deadline missed as a result of a significant departmental reorganization directly affecting the employees responsible for universal service filings); *Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5-Kidder Limited Partnership; and Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's rules*, 21 FCC Rcd 9179, ¶ 7 (2006) (deadline missed because former employee of consultant responsible for filing quarterly line counts was preoccupied with work-related and personal responsibilities, causing him to be away from the office for substantial periods of time and preventing the report from being filed sooner); *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's rules*, 20 FCC Rcd 16761, ¶ 5 (corporate reorganization implemented during the two weeks prior to the filing deadline directly affected employees responsible for the line count filing); *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, 20 FCC Rcd 20316, ¶ 6 (2005) (employee responsible for compiling and submitting data resigned about the time data was due).

In this case, Xfone went through a significant internal corporate reorganization *and* a loss of personnel responsible for submitting the line count data to USAC. The pre and post-

transaction activities necessary for the companies to accomplish the acquisition of NTS by Xfone, Inc., included the identification of redundant personnel and operations that could be consolidated or eliminated. That analysis necessarily disrupted the company's operations, and in particular, those personnel who were directly responsible for filing Xfone's regulatory and compliance filings. Xfone's situation is virtually identical to the cases discussed above, and the FCC found in those cases that good cause existed warranting a waiver of the quarterly line count submission deadlines. Prior to the acquisition and internal restructuring, Xfone had timely submitted its USF reports. Xfone has revised its internal procedures to ensure that it will comply with future filing deadlines by consolidating all of its regulatory compliance responsibilities in one department under its NTS affiliate, and ensuring that a primary and secondary NTS employee will be responsible for submitting Xfone's USF reports.

B. Purpose of the Underlying Rule Would not be Undermined, and Grant of the Waiver Would Serve the Public Interest

The purpose of the quarterly line count deadlines set forth in the Commission's rules are to ensure that information is timely filed to enable USAC to process the large volume of data it receives each year.¹¹ The goal of universal service is to "ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services."¹² However, deviation from the filing deadlines is appropriate where extenuating circumstances exist that demonstrate good cause for the requested waiver. This is not a situation where Xfone misunderstood the rules, or

¹¹ See, e.g., *Federal-State Joint Board on Universal Service, FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's rules and Regulations*, Order, 19 FCC Rcd 8202, ¶ 5 (2004).

¹² *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's rules*, 20 FCC Rcd 16761, ¶ 8 (2005) (citations omitted).

simply missed the filing deadline for unexplained reasons.¹³ Rather, Xfone went through a disruptive reorganization, and lost key personnel responsible for filing its USF reports, which the FCC has found in other cases to constitute good case for granting a waiver of the USF filing deadlines.

Moreover, strict enforcement of the filing deadline would disproportionately punish Xfone to the detriment of the rural customers that it serves. The loss of high cost and IAS funding would be contrary to the purpose of USF by undermining Xfone's investments in its network, and adversely affect its ability to ensure that customers have and maintain access to high quality telecommunications service. Indeed, the public interest would be served by grant of the requested waiver because it would enable Xfone to continue its efforts, uninterrupted, to maintain and promote access to advanced telecommunications services in high cost areas.

The FCC has granted waivers to advance the public interest in situations similar to that in the instant case, and the requested waiver will not cause any hardship for USAC or other USF funding recipients as the amount of USF support received by Xfone is very small compared to the overall size of the USF. Accordingly, granted of the instant Petition would enable Xfone to receive high cost support and IAS to further the goals of universal service, and serve the public interest.

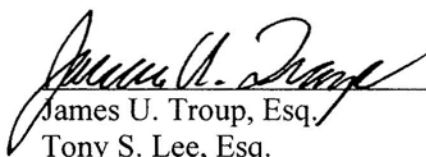
IV. CONCLUSION

The significant corporate reorganization and loss of regulatory personnel responsible for Xfone's USF submissions constitute good cause and special circumstances warranting a waiver

¹³ See, e.g., *NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules*, Order, 22 FCC Rcd 4946, 4948-49 (2007) (denying waiver because carrier missed deadline by six months based on a misunderstanding of USAC's rules); *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 CFR Section 54.307(c)*, Order, 19 FCC Rcd 17493, 17494 (2004) (denying waiver because carrier missed deadline by one month due to its own error).

of the quarterly line count submission deadlines in Sections 54.307(c) and 54.802(a) of the Commission's rules. The FCC has granted similar waiver requests to other ETCs under similar circumstances. Furthermore, the public interest would be served by providing Xfone with the high cost and IAS support it needs in order to continue to make high quality telecommunications services available to customers located in high-cost, insular, rural areas. Accordingly, Xfone requests that its Petition for Waiver of Sections 54.307(c) and 54.802(a) be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

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CERTIFICATION

I, Barbara Baldwin, hereby certify under penalty of perjury that I am the CEO and President of Xfone USA, Inc.; that I am authorized to make this certification on behalf of Xfone USA, Inc., that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

A handwritten signature in cursive script, appearing to read "Barbara Baldwin", is written over a horizontal line.

Barbara Baldwin
CEO and President
Xfone USA, Inc.

6-26-2008

Date